

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

GREGORY WOODS,	:	: CIVIL ACTION NO. 1:07-CV-0084
	:	
Plaintiff	:	: (Judge Conner)
	:	
v.	:	
	:	
CAPT. CHIARELLI, et al.,	:	
	:	
Defendants	:	

ORDER

AND NOW, this 30th day of May, 2007, upon consideration of plaintiff's motion for a default judgment (Doc. 18) pursuant to FED. R. CIV. P. 55 (a) (when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend . . . and, that fact is made to appear by affidavit or otherwise, judgment by default may be entered), and it appearing that defendants failed to timely plead or otherwise defend the complaint¹, and it further appearing that counsel's error in failing to file a timely answer minimally delayed the progression of the litigation, Feliciano v. Reliant Tooling Co., 691 F.2d 653, 656-57 (3d Cir. 1982), and that based upon a review of the answer (Doc. 27), there is no question that defendants have a valid defense to the case, Hritz v. Woma, 732 F.2d 1178, 1181 (3d Cir. 1984) and that there is nothing in the record that would indicate that the failure to timely respond went beyond mere negligence, rising to the level of "flagrant bad

¹Defendants were required to plead or otherwise defend the complaint on or before April 12, 2007. (Doc. 17). On April 18, 2007, defendants' counsel moved to extend the time until May 18, 2007, to answer the complaint. The motion was granted. (Doc. 24). An answer was filed on May 18, 2007. (Doc. 27).

faith” or “contumacious behavior” See Emasco Ins. Co. v. Sambrick, 834 F.2d 71, 75 (3d Cir. 1987); Scarborough v. Eubanks, 747 F.2d 871, 875 (3d Cir. 1984), and it further appearing that the Third Circuit has “repeatedly stated [their] preference that cases be disposed of on the merits whenever practicable.” Jorden v. Nat’l Guard Bureau, 877 F.2d 245, 251 (3d Cir. 1989)(citations omitted) it is hereby ORDERED that plaintiff’s motion for default judgment (Doc. 18) is DENIED.

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge